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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/166666

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 16, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care in regard to Medical Assistance, a hearing was held on October 29, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined that the Petitioner no longer meets the functional eligibility criteria for the Family Care program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

█  
█

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Lillian Alford

MY Choice Family Care  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner enrolled in the FC program on June 1, 2013.
3. Petitioner's primary diagnoses include the following mental health disorders: anxiety, bipolar disorder, depression, personality disorder, schizoaffective disorder, pica, ADD and substance

abuse disorder. His physical health diagnoses include: asthma, migraines, myocardial infarction, GERD, syncope.

4. On December 19, 2014, a Long Term Care Functional Screen (LTCFS) was completed for the Petitioner. He was determined to meet the Physical Disability Target Group. His cardiovascular impairment was assessed as limiting his life activity of capacity of independent living. It was noted that due to random episodes of dizziness, he is unable to lift heavy objects. He was also found to meet the Severe and Persistent Mental Illness Target Group. The assessor determined that the Petitioner was independent with all activities of daily living (ADLs). The assessor determined he required assistance with the following Instrumental ADLs (IADLs): meal preparation, money management and transportation. It was noted that he needs assistance with making a list of items needed for grocery shopping and carrying groceries. He makes poor choices with his money and is behind in bills. He cannot drive due to psychiatric impairment (schizophrenia). It was noted that the Petitioner has behaviors requiring interventions 1 – 2x/day. It is specifically indicated that when frustrated and anxious, the Petitioner has episodes of pica and needs redirection and monitoring daily. He was noted to have had multiple episodes in the past 6 months. He was also assessed as needing assistance with decision-making in new situations. Petitioner was found to be at a nursing home level of care.
5. On or about May 19, 2015, a LTCFS was completed for the Petitioner. The Petitioner was found not to meet the Physical Disability Target Group because his diagnoses do not compromise his ability to complete ADLs. He was found to meet the Severe and Persistent Mental Illness Target Group. This LTCFS was not provided as part of the hearing exhibits so it is unknown what the screener determined with regard to ADLs and IADLs. The Petitioner was found not to meet the nursing home level of care.
6. On June 8, 2015, the agency issued a Notice of Decision to the Petitioner informing him that his FC program enrollment would end effective July 1, 2015 due to not meeting the level of care criteria.
7. On June 16, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.
8. On July 15, 2015, a re-screen of the LTCFS was completed for the Petitioner. The Petitioner was found not to meet the Physical Disability Target Group because the agency determined he does not have a long term health care condition that impacts at least one major life activity and that his limitations are related only to his Severe and Persistent Mental Illness. The screener determined that the Petitioner is independent with all ADLs except eating. With regard to eating, the Petitioner was noted to have tremors in his hands, making it difficult for him to cut-up food. The tremors are reported by the Petitioner and his caregiver to be related to his anxiety. With regard to IADLs, the screener found the Petitioner is independent with all except laundry/chores and transportation. The screener noted that the Petitioner is able to prepare meals in the microwave and stove/oven and is able to grocery shop. The Petitioner reported abdominal pain carrying heavy groceries but can carry bags that are lightly packed. The screener also noted that the Petitioner does not need assistance with money management due to poor choices (result of previous screen in May, 2015). The agency asserts that making poor choices is not able to be captured on the LTCFS. The Petitioner was found to require overnight assistance due to risky behaviors, specifically pica and offensive and violent behaviors. The screener noted the Petitioner is able to make safe, familiar decisions but has difficulty with decision-making in new situations. The screener determined that this is related to his mental health diagnoses. The screener determined the Petitioner does not meet the nursing home level of care.
9. On June 1, 2015, June 26, 2015 and July 27, 2015, Petitioner went to the hospital with migraine headaches.

## DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10. Whenever the local Family Care program decides that a person is to be terminated from the program, the client is allowed to file a fair hearing request. The petitioner did so here. The burden of proving, by a preponderance of the credible evidence, that discontinuance of an ongoing case was correct rests with the agency. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980).

In order to qualify for FC services, with certain exceptions not applicable here, a person's functioning must be such that they would otherwise require institutional care. Wis. Stat. §46.286(1)(a).

DHS utilizes a Long Term Functional Screen Tool (LTCFS) to determine an individual's functional eligibility. In order to be functionally eligible for the Family Care program, a person must meet the following conditions:

1. The person must have a long term care condition or have a condition that is expected to result in death within one year.
2. The person's condition must meet one or more of the target group definitions that are eligible for publicly-funded long term care programs in Wisconsin.
3. The person whose condition meets a target group definition must have a need for assistance from another person to complete Activity of Daily Living/ Instrumental Activity of Daily Living (ADL/IADL) or Health Related Services (HRS) tasks that is directly related to the condition(s) that qualified the person for a target group.

LTCFS Instructions, § 2.1. See also Wisconsin §1915(c) Home and Community Based Services Waiver at <https://www.dhs.wisconsin.gov/familycare/statefedreqs/fc1915cwaiver.pdf>

In determining whether an individual meets a target group definition, a qualified screener relies on professional judgment when applying federal and state statutory definitions for eligible target groups. Target groups include:

- Frail Elder
- Physical Disability
- Developmental Disability per FEDERAL definition
- Developmental Disability per STATE definition but NOT Federal definition
- Alzheimer's disease or other irreversible dementia (onset any age)
- A terminal condition with death expected within one year from the date of this screening
- Severe and persistent mental illness
- None of the above (No Target Group)

LTCFS, § 2.2.

In this case, it is undisputed that the Petitioner meets the definition for the Severe and Persistent Mental Illness (SPMI) target group. However, the LTCFS Instruction Manual states as follows:

Although severe and persistent mental illness is included as a LTC FS target group, eligibility for Wisconsin's publicly-funded long term care programs such as Family Care, PACE/Partnership, CIP 1A/1B and COP-Waiver requires that consumers also have LTC conditions related to another primary LTC target group (e.g., Frail Elder, Physical Disability, Intellectual/Developmental Disability). Severe and persistent mental illness

cannot be the only LTC target group selected if a person is to be found eligible for publicly-funded long term care programs.

LTCFS Instructions, § 2.12.

In this case, the Petitioner was previously found to meet the Physical Disability (PD) Target Group. The Petitioner was found not to meet that PD target group when the May and July, 2015 LTCFS was completed. Because he only met the SPMI target group, the determination was made that the Petitioner no longer meets the functional eligibility requirements. Therefore, the issue is whether the agency's determination that the Petitioner no longer meets the PD target group is correct.

Physical Disability is defined as follows for purposes of determining whether an individual meets the PD target group:

Physical disability means a physical condition, including an anatomical loss or musculoskeletal, neurological, respiratory or cardiovascular impairment, which results from injury, disease or congenital disorder and which significantly interferes with or significantly limits at least one major life activity of a person.

LTCFS §2.4.

The Petitioner's medical diagnoses include asthma, migraines, myocardial infarction, GERD and syncope. Based on the evidence provided, I concur that the Petitioner does not meet the physical disability target group. There was no medical documentation or other testimony provided by the Petitioner to demonstrate that any of his physical conditions significantly limit any major life activities. There is medical documentation of 3 migraines requiring treatment in June and July. There is a history of a heart condition but no recent acute episodes. The Petitioner testified that he has dizziness on occasion. He also has a heavy lifting restriction. However, there is no evidence that these conditions significantly limit major life activities. The evidence indicates that any limitations the Petitioner has on life activities are related to his mental health diagnoses. Therefore, based on the evidence, I conclude that the agency properly determined that the Petitioner does not meet the physical disability target group and therefore is not functionally eligible for the Family Care program.

I note that the agency testified at the hearing that there is another program that focuses on providing assistance to persons with mental illness. The agency has tried to convince the Petitioner to apply for this program but he has been resistant. I urge the Petitioner to reconsider and contact the agency to inquire about the program.

### **CONCLUSIONS OF LAW**

The agency properly determined that the Petitioner does not meet the physical disability target group and therefore is not functionally eligible for the Family Care program.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

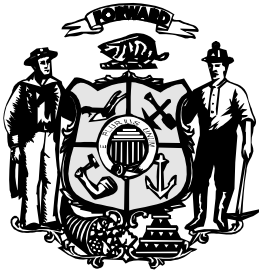
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of December, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 10, 2015.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability